



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0391; FRL-11368-02-R4]

Air Plan Approval; North Carolina; Revisions to Miscellaneous Particulate Matter Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ) via a letter dated April 13, 2021. The SIP revision seeks to modify the State's emission control standards by amending several air quality rules and removing a redundant rule for electric utility boilers. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0391. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The

Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at WilliamsMiles.Pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

EPA is approving a SIP revision submitted by North Carolina on April 14, 2021,¹ seeking to amend various air quality rules and to remove one rule from the North Carolina SIP.² Specifically, the SIP revision addresses State regulations amended in 15A North Carolina Administrative Code (NCAC) Subchapter 02D. The submission includes changes to multiple rules in Sections .0400 and .0500 of Subchapter 02D and the removal of Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*.³ To support the removal of Rule 02D .0536 from the SIP, the submission includes technical support materials to demonstrate that the removal of the rule would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.⁴

Through a notice of proposed rulemaking (NPRM) published on September 1, 2023 (88 FR 60424), EPA proposed to approve the April 13, 2021, submission. The details of North Carolina's submission, which amends various air quality rules and removes Rule 02D .0536 from North Carolina's SIP, as well as EPA's rationale for approving the changes, are described

¹ EPA notes that the April 14, 2021, submission was received under a cover letter dated April 13, 2021. For clarity, throughout this document EPA will refer to the April 14, 2021, submission by its cover letter date of April 13, 2021.

² On April 13, 2021, North Carolina provided multiple SIP revisions related to other North Carolina SIP-approved rules. These SIP revisions are not addressed in this document. EPA will act or has acted on those SIP revisions in separate rulemakings.

³ EPA will not act on Rule 02D .0503, *Particulates from Fuel Burning Indirect Heat Exchangers*, since this section was withdrawn from EPA consideration in a letter dated January 17, 2023, which is in the docket of this action.

⁴ See 42 U.S.C. 7410(l).

in the September 1, 2023, NPRM. Comments on the September 1, 2023, NPRM were due on or before October 2, 2023. No comments were received on the September 1, 2023, NPRM, adverse or otherwise.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of the following air quality rules under 15A NCAC Subchapter 02D, Air Pollution Control Requirements, state effective on November 1, 2020: 02D .0403, *Total Suspended Particulates*; 02D .0501, *Compliance with Emission Control Standards*; 02D .0504, *Particulates from Wood Burning Indirect Heat Exchangers*; 02D .0506, *Particulates from Hot Mix Asphalt Plants*;⁵ 02D .0507, *Particulates from Chemical Fertilizer Manufacturing Plants*; 02D .0508, *Particulates from Pulp and Paper Mills*; 02D .0509, *Particulates from Mica and Feldspar Processing Plants*; 02D .0510, *Particulates from Sand, Gravel or Crushed Stone Processes*; 02D .0511, *Particulates from Lightweight Aggregate Processes*; 02D .0513, *Particulates from Portland Cement Plants*; 02D .0514, *Particulates from Ferrous Jobbing Foundries*; and 02D .0515, *Particulates from Miscellaneous Industrial Processes*. Also in this document, EPA is finalizing the removal of Rule 02D .0536, *Particulate Emissions from Electric Utility Boilers*, from the North Carolina SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of

⁵ As noted in the NPRM, EPA is not acting on the removal of the term “elsewhere” in Rule 02D .0506(e) because North Carolina withdrew the removal of this word from EPA consideration in a letter dated January 17, 2023, which is in the docket for this action. The term “elsewhere” is included in the August 1, 2004, state effective version of Rule 02D .0506(e). The April 13, 2021, SIP submittal includes the August 1, 2004, version of the Rule with redline/strikeout changes showing the differences between the August 1, 2004, version of the rule and the November 1, 2020, version of the Rule. Therefore, to implement the State’s April 13, 2021, SIP submittal, as amended by the withdrawal letter, EPA is incorporating by reference the version of the Rule state effective on November 1, 2020, except for the phrase “not covered” in paragraph .0506(e), and is incorporating by reference the phrase “not covered elsewhere” from the version of .0506(e) state effective on August 1, 2004. The resulting regulatory text in paragraph .0506(e) in the SIP reads, “Fugitive emissions for sources at a hot mix asphalt plant not covered elsewhere by this Rule shall not exceed 20 percent opacity averaged over six minutes.”

this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

III. Final Action

EPA is approving the aforementioned changes to the North Carolina SIP. Specifically, EPA is finalizing the approval of the April 13, 2021, SIP revision which amends various air quality rules under 15A NCAC 02D, Air Pollution Control Requirements, and removes Rule 02D .0536 from North Carolina's SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

⁶ *See* 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms

and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

NCDAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 24, 2023.

Jeaneanne Gettle,

Acting Regional Administrator,

Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II - North Carolina

2. In § 52.1770(c), amend “Table (1) EPA-Approved North Carolina Regulations” by:

- a. Under the heading “Section .0400 Ambient Air Quality Standards”, revising the entry for “Rule .0403”;
- b. Under the heading “Section .0500 Emission Control Standards”, revising the entries for “Rule .0501”, “Rule .0504”, “Rule .0506”, “Rule .0507”, “Rule .0508”, “Rule .0509”, “Rule .0510”, “Rule .0511”, “Rule .0513”, “Rule .0514”, and “Rule .0515”; and removing the entry for “Rule .0536”.

The revisions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA-Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section .0400 Ambient Air Quality Standards				
**	**	*	*	*
Rule .0403	Total Suspended Particulates	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*
Section .0500 Emission Control Standards				

Rule .0501	Compliance with Emission Control Standards	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*
Rule .0504	Particulates from Wood Burning Indirect Heat Exchangers	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*
Rule .0506	Particulates from Hot Mix Asphalt Plants	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	Except that, in paragraph (e), the phrase “not covered” is replaced with the phrase “not covered elsewhere” from paragraph (e), with a state effective date of August 1, 2004.
Rule .0507	Particulates from Chemical Fertilizer Manufacturing Plants	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
Rule .0508	Particulates from Pulp and Paper Mills	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
Rule .0509	Particulates from Mica or Feldspar Processing Plants	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
Rule .0510	Particulates from Sand, Gravel, or Crushed Stone Operations	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
Rule .0511	Particulates from Lightweight Aggregate Processes	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*

Rule .0513	Particulates from Portland Cement Plants	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
Rule .0514	Particulates from Ferrous Jobbing Foundries	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
Rule .0515	Particulates from Miscellaneous Industrial Processes	11/1/2020	[Insert date of publication in Federal Register], [Insert citation of publication]	
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[FR Doc. 2023-24033 Filed: 11/2/2023 8:45 am; Publication Date: 11/3/2023]